

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION**

MDL NO. 08-md-02002

**This document relates to:
ALL ACTIONS**

F.R.C.P. RULE 26(a)(2)(B) REPORT OF JONATHAN WALKER

HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

FILED UNDER SEAL

allegedly subject to the conspiracy and conduct analyses aimed at determining whether a hypothetical monopolist could maintain supracompetitive prices over the reference product without losing so many sales to products outside of the proposed market definition that the price increase would be unprofitable.

51. Market definition is a demand driven analysis that focuses on actual and potential substitutes.⁴⁶ However, economists will also include in a well-defined market capacity that is presently either idle or used to produce non-substitutes if it is likely that the capacity would be quickly applied toward production of substitute products in the event of an anticompetitive price increase.⁴⁷ In the case at hand, not all shell eggs, raw unpasteurized liquid egg, pasteurized liquid egg, industrial egg products and high value-added egg products are substitutable with each other. Moreover, capacity is not readily diverted from production of one of these product groups to another, so there is no such thing as a cognizable U.S. market that includes shell eggs, raw unpasteurized liquid egg, industrial egg products and high value-added egg products. I explain further below.

52. Raw unpasteurized liquid egg is not a substitute for table eggs or egg products. One reason is that it is illegal to sell raw unpasteurized liquid egg other than to government approved commercial buyers such as egg product companies.⁴⁸ “Industrial” egg products (e.g., short shelf life liquid eggs, dried egg products and certain frozen egg products) are not all substitutable in use with shell eggs because industrial egg products are not generally packaged and marketed in a way that is convenient for home use. They cannot generally be used in the home to make egg dishes, and they cannot be used in the home as a substitute ingredient for shell eggs in recipes. Some egg products are intended for home consumers, but these products are often branded, high value-added products aimed at niche markets. Dr. Lamb cites studies suggesting that egg products aimed at consumers tend to be priced at a premium relative to shell eggs notwithstanding that the overwhelming majority of adults prefer to use whole eggs over egg substitutes.⁴⁹

53. Just as purchasers of shell eggs cannot readily substitute toward industrial egg products,

⁴⁶ U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, August 19, 2010, Section 4.

⁴⁷ U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, August 19, 2010, Section 5.1.

⁴⁸ Affidavit of William Rehm, at ¶ 7 (August 4, 2014)

⁴⁹ Lamb Report, p. 20.

purchasers of industrial egg products cannot readily substitute toward shell eggs. Commercial establishments (like food manufacturers and food service) utilize plant and equipment designed for egg products rather than shell eggs. Food service companies use egg products (rather than shell eggs) not only for ease in handling and storing, but because egg products are pasteurized. Institutional foodservice operators, such as fast food chains, restaurants, hospitals, and nursing homes, use egg products rather than shell eggs to ensure a higher level of food safety.⁵⁰ Consequently, these customers cannot substitute shell eggs for egg products in the event of an increase in egg product prices.

54. The various categories of industrial egg products and the various categories of high value-added egg products are not substitutable with each other. As Dr. Baye acknowledges, “different processes require different forms of eggs, and thus likely limits substitution within different classes of eggs and egg products.”⁵¹ Some egg products are marketed exclusively for commercial applications and make use of proprietary technology, for example enzyme-processed egg product. Other high value-added egg products are marketed for home use and cannot be used by food manufacturers such as Kraft, Kellogg or Unilever. Suppliers are not likely to switch capacity from one application to another in part because high value-added egg product manufacturing equipment is specialized.⁵² Supply substitution across egg products is also unlikely because industrial egg product companies have established relationships with customers with supply commitments and entry into branded egg products requires marketing and advertising effort.

55. Some egg product prices move independently from shell egg prices and from other egg product prices. EI economists have prepared graphs illustrating average prices for certain Michael Foods egg products and the price of shell eggs over the period 1999 – 2009. I show the graphs in Figure 4. ESL are extended shelf life liquid eggs. ESL, low cholesterol eggs, pre-cooked eggs and hardcooked eggs are all high value-added products. The first two rows of charts show that high value-added egg product prices move independently from shell egg prices. The bottom left graph compares low cholesterol egg product prices (a high value-added egg product) to Michael Foods’ average dried egg prices (industrial egg products). The high value-added egg product price moves

⁵⁰ “Egg Products and Food Safety,” USDA, available at http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/egg-products-preparation/egg-products-and-food-safety/ct_index.

⁵¹ Baye Report at paragraph 64.

⁵² Affidavit of Charles W. Berry, August 4, 2014, ¶¶ 4 and 41.